

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MATTHEW J. HOYO,

Petitioner,

v.

CASE NO. 2:18-CV-579

CRIM. NO. 15-CR-256

JUDGE MICHAEL H. WATSON

Magistrate Judge Chelsey M. Vascura

UNITED STATES OF AMERICA,

Respondent.

OPINION AND ORDER

On February 22, 2019, the Magistrate Judge issued a Report and Recommendation recommending that all of Petitioner's claims, with the exception of his claim of the denial of the effective assistance of counsel based on his attorney's failure to file an appeal, be dismissed, and that this latter claim be held in abeyance pending a decision from the United States Supreme Court on the issue. ECF No. 107. Although the parties were advised of the right to file objections to the Magistrate Judge's Report and Recommendation, and of the consequences of failing to do so, no objections have been filed.


The Report and Recommendation, ECF No. 107, is **ADOPTED** and **AFFIRMED**. All of Petitioner's claims, with the exception of his claim of the denial of the effective assistance of counsel based on his attorney's failure to file an appeal, are hereby **DISMISSED**.

In view of the United States Supreme Court's recent decision in *Garza v. Idaho*, 139 S.Ct. 738, -- U.S. -- (2019), Petitioner's claim of the denial of the

effective assistance of counsel based on his attorney's alleged failure to file an appeal after being requested to do so is recommitted to the Magistrate Judge for issuance of a Report and Recommendation on the issue.

Petitioner has waived his right to appeal by failing to file objections. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Therefore, the Court **DECLINES** to issue a certificate of appealability.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT